

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE KYJEN COMPANY, LLC,
Plaintiff,

-v.-

THE INDIVIDUALS, CORPORATIONS,
LIMITED LIABILITY COMPANIES,
PARTNERSHIPS, AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE A TO THE
COMPLAINT,
Defendants.

23 Civ. 612 (JHR)

PRELIMINARY INJUNCTION
ORDER

JENNIFER H. REARDEN, District Judge:

This matter comes before the Court on the application of The Kyjen Company, LLC (“Plaintiff”), by Order to Show Cause, for entry of a Preliminary Injunction (the “Application”) against the Defendants identified on Schedule A to the Preliminary Injunction Order, attached hereto (the “PI Defendants”), and using at least the domain names or online marketplace accounts identified on Schedule A (collectively, the “PI Defendant User Accounts”).¹

The Court has reviewed the papers in support of the Application and finds that it has personal jurisdiction over the PI Defendants. The PI Defendants directly target their business activities toward consumers in the United States, including New York, offering to sell and ship products into this Judicial District. Specifically, the PI Defendants reach out to do business with New York residents by operating one or more commercial, interactive Internet Stores through which New York residents can purchase counterfeit versions of Plaintiff’s Outward Hound

¹ Any capitalized term not defined herein shall have the meaning set forth in the Order to Show Cause entered by the Court on January 31, 2023. *See* ECF No. 23.

Products (“Counterfeit Products”) incorporating at least one of Plaintiff’s trademarks, covered by the U.S. Trademark Registration Nos. 3,281,982; 4,912,829; 2,709,593; 2,930,186; 3,278,965; 3,646,119; 4,514,817; 5,412,084; 5,428,383; 5,781,063; 5,781,065; or 6,301,802 (the “Outward Hound Trademarks”), and/or Plaintiff’s design patents, covered by U.S. Design Patent Nos. US D699,009 S; US D705,999 S; US D706,000 S; US D706,494 S; US D706,495 S; or US D706,001 S (the “Outward Hound Patents,” and together with the Outward Hound Trademarks, the “Outward Hound IP”).

The Court concludes that Plaintiff meets the criteria for preliminary injunctive relief against the PI Defendants. The evidence establishes that Plaintiff has a likelihood of success on the merits; that no remedy at law exists; and that Plaintiff will suffer irreparable harm if the injunction is not granted, including, for example:

1. Through the Declarations of Anna Iskikian and Evanka Herbers and accompanying evidence, Plaintiff has proven a prima facie case of trademark infringement because (1) the Outward Hound Trademarks are registered with the U.S. Patent and Trademark Office, and Plaintiff holds all right, title, and interest in and to the Outward Hound Trademarks; (2) Plaintiff develops, markets, and sells products using the Outward Hound Trademarks; (3) the PI Defendants make, use, offer for sale, sell, and/or import into the United States for subsequent sale or use products using the mark covered by the Outward Hound Trademarks; (4) an ordinary observer would be deceived into thinking that the Counterfeit Products are the same as Plaintiff’s Outward Hound Products, or would be confused by the PI Defendants’ use of the Outward Hound Trademarks; and (5) the PI

Defendants are not licensed or authorized to use the Outward Hound Trademarks, and none of the PI Defendants is an authorized retailer of genuine Outward Hound Products. Further, Plaintiff has proven a prima facie case of design patent infringement because the PI Defendants have infringed directly and/or indirectly the design claimed in Plaintiff's Outward Hound Patents by utilizing Plaintiff's Outward Hound Patents without Plaintiff's consent.

2. The PI Defendants' continued and unauthorized use of the Outward Hound Trademarks and/or Outward Hound Patents irreparably harms Plaintiff through diminished goodwill and brand confidence, damage to Plaintiff's reputation, loss of exclusivity, and loss of future sales.
3. Monetary damages fail to address such damage and, therefore, Plaintiff has an inadequate remedy at law; and
4. The public interest is served by entry of this Preliminary Injunction to dispel the public confusion created by the PI Defendants' actions.

The Court therefore determines that a preliminary injunction is warranted under Federal Rule of Civil Procedure 65. The injunctive relief initially granted in the Temporary Restraining Order ("TRO") on January 31, 2023 (ECF No. 23), and later extended on February 10, 2023 and February 24, 2023 (ECF Nos. 26, 32), should remain in place through the pendency of this litigation.

NOW THEREFORE, on this 16th day of March, 2023, this Court ORDERS that:

1. The PI Defendants, their affiliates, officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through, under, or in active concert with them be temporarily enjoined and restrained from:

- a. Using the Outward Hound Trademarks and/or Outward Hound Patents or any reproductions, counterfeit copies, or colorable imitations thereof in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any Counterfeit Products;
- b. Passing off, inducing, or enabling others to sell or pass off any product as a genuine Outward Hound Product that is not, in fact, Plaintiff's Outward Hound Product and/or is not produced under the authorization, control, or supervision of Plaintiff and approved by Plaintiff for sale using the Outward Hound Trademarks and/or Outward Hound Patents;
- c. Committing any acts calculated to cause consumers to believe that the PI Defendants' Counterfeit Products are those sold under the authorization, control, or supervision of Plaintiff, or are sponsored by, approved by, or otherwise connected with Plaintiff;
- d. Further infringing the Outward Hound Trademarks and/or Outward Hound Patents and damaging Plaintiff's goodwill;
- e. Shipping, delivering, holding for sale, transferring, or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner, products or inventory not manufactured by or for Plaintiff, nor authorized by Plaintiff to be sold or offered for sale, and which

bear(s) any Outward Hound Trademark or any reproductions, counterfeit copies, or colorable imitations thereof;

- f. Using, linking to, transferring, selling, exercising control over, or otherwise owning the User Accounts, the PI Defendant Internet Stores, or any other domain name or online marketplace account that is being used to sell, or is the means by which the PI Defendants could continue to sell, versions of Plaintiff's Outward Hound Products; and
- g. Operating and/or hosting websites and/or any other web presence registered or operated by the PI Defendants that are involved with the distribution, marketing, advertising, offering for sale, or sale of any product using the Outward Hound Trademarks and/or Outward Hound Patents.

2. Within fourteen (14) days of receiving notice of this Order, the PI Defendants shall each serve upon Plaintiff a written report under oath providing: (a) their true name and physical address, (b) all websites and online marketplace accounts on any platform that they own and/or operate; (c) their financial accounts, including by way of example, all AllPay/GoAllPay, Amazon, Coinbase, DHgate, eBay, HyperWallet, Lakala, LianLian, OFX, Paxful, PayEco, Payoneer, PayPal, PingPong, SellersFunding, Stripe, Union Mobile/UmPay/UmPay2, Walmart, Wise/TransferWise, Wish, and World First accounts; and (d) the steps taken by each PI Defendant to comply with paragraph 1, a through g, above.

3. Within five (5) days of receipt of this Order, Amazon, DHgate, eBay, Walmart, Wish, and any other online marketplace platforms or service providers hosting or servicing a PI Defendant User Account are directed to disable and cease providing services for any PI Defendant

User Accounts through which the PI Defendants engage in the sale of counterfeit and infringing goods using the Outward Hound Trademarks and/or Outward Hound Patents, including any accounts associated with the PI Defendants.

4. Within five (5) business days of receipt of actual notice of this Order, the PI Defendants and any third party with such actual notice who is providing services for any of the PI Defendants, or in connection with any PI Defendant User Account, including, without limitation, any online marketplace platforms such as Amazon, DHgate, eBay, Walmart, Wish, and/or merchant account providers, including AllPay/GoAllPay, Amazon, Coinbase, DHgate, eBay, HyperWallet, Lakala, LianLian, OFX, Paxful, PayEco, Payoneer, PayPal, PingPong, SellersFunding, Stripe, Union Mobile/UmPay/UmPay2, Walmart, Wise/TransferWise, Wish, and World First, third party processors and other payment processing service providers, shippers, and domain name registrars (collectively, the “Third Party Providers”), shall provide to Plaintiff expedited discovery, including copies of all documents and records in such person’s or entity’s possession or control relating to:

- a. The identities and locations of the PI Defendants, their agents, servants, employees, confederates, attorneys, and any persons acting in concert or participation with them, including all known contact information;
- b. The nature of the PI Defendants’ operations and all associated sales and financial information, including, without limitation, identifying information associated with the PI Defendant User Accounts and the PI Defendants’ financial accounts, as well as providing a full accounting of the PI Defendants’ sales and listing history related to their respective PI Defendant User Accounts;

- c. The PI Defendant User Accounts or any domain name registered by the PI Defendants;
- d. Any financial accounts owned or controlled by the PI Defendants, including their agents, servants, employees, confederates, attorneys, and any persons acting in concert or participation with them, including such accounts residing with or under the control of any banks, savings and loan associations, payment processors or other financial institutions, including, without limitation, AllPay/GoAllPay, Amazon, Coinbase, DHgate, eBay, HyperWallet, Lakala, LianLian, OFX, Paxful, PayEco, Payoneer, PayPal, PingPong, SellersFunding, Stripe, Union Mobile/UmPay/UmPay2, Walmart, Wise/TransferWise, Wish, World First, or other merchant account providers, payment providers, third party processors, and credit card associations (e.g., MasterCard and VISA).

5. Until further ordered by this Court, the PI Defendants and any persons in active concert or participation with them who have actual notice of this Order shall be temporarily restrained and enjoined from transferring or disposing of any money or other of the PI Defendants' assets.

6. Within five (5) business days of receipt of this Order, Amazon, DHgate eBay, Walmart, Wish, and any other online marketplace platform or service provider hosting or servicing a PI Defendant User Account shall, for any PI Defendant or any of the PI Defendants' Online Marketplace Accounts or websites:

- a. Locate all accounts and funds connected to and related to the PI Defendants, the PI Defendants' Online Marketplace Accounts, or the PI Defendants'

websites, including, but not limited to, any AllPay/GoAllPay, Amazon, Coinbase, DHgate, eBay, HyperWallet, Lakala, LianLian, OX, Paxful, PayEco, Payoneer, PayPal, PingPong, SellersFunding, Stripe, Union Mobile/UmPay/UmPay2, Walmart, Wise/TransferWise, Wish, and World First accounts connected to and related to the information listed in Schedule A hereto; and

- b. Restrain and enjoin any such accounts or funds from transferring or disposing of any money or other of the PI Defendants' assets until further order of this Court.

7. Within five (5) business days of receipt of this Order, any banks, savings and loan associations, payment processors, or other financial institutions, for any PI Defendant or any PI Defendant User Account, shall:

- a. Locate all accounts and funds connected to the PI Defendants, the PI Defendants' Online Marketplace Accounts or PI Defendants' websites, including, but not limited to, any accounts connected to the information listed in Schedule A hereto; and
- b. Restrain and enjoin such accounts from receiving, transferring, or disposing of any money or other of the PI Defendants' assets until further order of this Court.

8. For the reasons stated in the Court's Orders dated March 2, 2023 and March 7, 2023 (ECF Nos. 33, 38), Plaintiff may provide notice of these proceedings to the PI Defendants by electronically publishing a link to the Complaint, the January 31, 2023 TRO, this Order, and other relevant documents on a website or by sending an e-mail, including a link to said website,

to all e-mail addresses identified by Plaintiff and any e-mail addresses provided for the PI Defendants by third parties. The combination of providing notice via electronic publication or e-mail, along with any notice that the PI Defendants receive from domain name registrars and payment processors, shall constitute notice reasonably calculated under all circumstances to apprise the PI Defendants of the pendency of the action and afford them the opportunity to present their objections.

9. Plaintiff's Schedule A to the Complaint and Exhibit 3 to the Declaration of Evanka Herbers shall become unsealed.

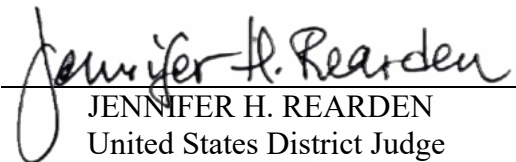
10. Any PI Defendants that are subject to this Order may appear and move to dissolve or modify the Order on two days' notice to Plaintiff or on shorter notice as set by this Court.

11. The five thousand dollars (\$5,000.00) bond posted by Plaintiff shall remain with the Court until a final disposition of this case, or until this Preliminary Injunction is terminated.

The Clerk of Court is directed to unseal Plaintiff's Schedule A to the Complaint (ECF No. 12) and Exhibit 3 to the Declaration of Evanka Herbers (ECF Nos. 13-1 to 13-26).

SO ORDERED.

Dated: March 16, 2023
New York, New York


JENNIFER H. REARDEN
United States District Judge

SCHEDULE A TO [PROPOSED] PRELIMINARY INJUNCTION ORDER

Doe No.	Defendant Seller	Defendant Online Marketplace
2.	AMZJIANJIAN	https://www.amazon.com/sp?seller=A1KMKMHKD0R8Z1
7.	Cinny	https://www.amazon.com/sp?seller=a17x9st42p802g
8.	DLYshopping	https://www.amazon.com/sp?seller=A28PWF6XSGN43
9.	fangfangxuan168	https://www.amazon.com/sp?seller=A2HX8Z2KGFUNHQ
10.	Feng hua gong ying lian	https://www.amazon.com/sp?seller=A1D620UCNZQPA7
11.	fuqiangzhang store	https://www.amazon.com/sp?seller=A2D03DWG6DS149
12.	GANGBAO	https://www.amazon.com/sp?seller=A3KZFEVQ1B7JM
13.	GLINZDz	https://www.amazon.com/sp?seller=A25MQB1V34KZBL
14.	GOARD LODA	https://www.amazon.com/sp?seller=A1B6JFFG9IA1DA
15.	GYANF	https://www.amazon.com/sp?seller=ACVSOSNM5AS9B
16.	HOME-STAR	https://www.amazon.com/sp?seller=A1A1KPWECJ9D0V
17.	Huayuan Supplies	https://www.amazon.com/sp?seller=A2BH9TV7VG30DT
18.	Incyj	https://www.amazon.com/sp?seller=A7HW74J3P7G7L
19.	Jindawu-US	https://www.amazon.com/sp?seller=AG8RFCGAP1B4Q
20.	Jingbo	https://www.amazon.com/sp?seller=AKRZ9YAQUQ60J
21.	jiujianglinfudianzishangwuyouxi angongsi	https://www.amazon.com/sp?seller=A3IYODT7MGFS4L
22.	Juanking	https://www.amazon.com/sp?seller=A1T0K56WD0Q35
23.	lambo888	https://www.amazon.com/sp?seller=A1T0BEG6BG18XO
24.	LAN-YAN	https://www.amazon.com/sp?seller=A14H2H8DVO0XOM
25.	Likeets	https://www.amazon.com/sp?seller=AU3JB6LVSK9R2
26.	Luohe Dichu Trading Co., Ltd.	https://www.amazon.com/sp?ie=UTF8&seller=A3BXXKQQFPV4ETH&asin=B092J9WPRC&ref_=dp_merchant_link#:~:text=Submit-,Luohe%20Dichu%20Trading%20Co.%2C%20Ltd.,-Visit%20the%20storefront
27.	MaoTopCom	https://www.amazon.com/sp?seller=AMSDKPKMC48KT
28.	NZSMYXGS	https://www.amazon.com/sp?seller=A1OEXF7FQ4D9LT
31.	RSiug Ltd.	https://www.amazon.com/sp?seller=A32LBCWGCCCQIT

Doe No.	Defendant Seller	Defendant Online Marketplace
33.	sensiya	https://www.amazon.com/sp?seller=A1Y7JNW596SEZ2
35.	shuangmai	https://www.amazon.com/sp?seller=A3V6BO02A6M5FC
36.	Sxhlsellon	https://www.amazon.com/sp?seller=A1LD6PUW8KAGJI
37.	Threelin3	https://www.amazon.com/sp?seller=af4gk0oaukzwc
38.	tongshengyao	https://www.amazon.com/sp?seller=AN1KO8263KGQ0
39.	wenhangliyunhuishangmaoyouxi angongsi888	https://www.amazon.com/sp?seller=AYH154SDTU3ZC
41.	Wuiadef-US	https://www.amazon.com/sp?seller=A18P9J1R19E2OV
44.	bianqueli	https://www.dhgate.com/store/about-us/21635047.html
45.	bulksell	https://www.dhgate.com/store/about-us/20530017.html
46.	emours	https://www.dhgate.com/store/about-us/18477257.html
47.	EWIN24 GROUP	https://www.dhgate.com/store/about-us/14772852.html
48.	galry	https://www.dhgate.com/store/about-us/20249163.html
49.	jspet1	https://www.dhgate.com/store/about-us/21703209.html
50.	lumber21	https://www.dhgate.com/store/about-us/21634690.html
51.	mixsmoking	https://www.dhgate.com/store/about-us/21298370.html
52.	petrich	https://www.dhgate.com/store/about-us/21014324.html
53.	rubibegone	https://www.dhgate.com/store/about-us/21628308.html
54.	xianbeilo	https://www.dhgate.com/store/about-us/21631225.html
61.	evicbeshop	https://www.ebay.com/usr/evicbeshop
65.	jasgood18	https://www.ebay.com/usr/jasgood18

Doe No.	Defendant Seller	Defendant Online Marketplace
82.	Caluo E-commerce	https://www.walmart.com/reviews/seller/101266581
83.	chengdujianghubianshang	https://www.walmart.com/reviews/seller/101295926
87.	Happy date	https://www.walmart.com/reviews/seller/101043410
88.	Grocery Store	https://www.walmart.com/reviews/seller/101263008
89.	hefeizaiheibaihuoyouxiangongsi	https://www.walmart.com/reviews/seller/101294914
91.	Lsgrael	https://www.walmart.com/reviews/seller/101198093
93.	NEGOO STORE	https://www.walmart.com/reviews/seller/101264045
94.	putianshichengxiangquqirongma oyiyouxiangongsi	https://www.walmart.com/reviews/seller/101288091
95.	SAJAR TRADING	https://www.walmart.com/reviews/seller/101259895
96.	ShanXiFaZeKeJiYouXianGongS i	https://www.walmart.com/reviews/seller/101289718
98.	Suuny Market	https://www.walmart.com/reviews/seller/101256289
99.	Waykada	https://www.walmart.com/reviews/seller/101191347
100.	xuanchengxuanfanqiyeguanliyou xiangongsi	https://www.walmart.com/reviews/seller/101257512

Doe No.	Defendant Seller	Defendant Online Marketplace
102.	Cwhjun kk	https://www.wish.com/merchant/58896a40e5c8a54e084440d4
104.	Deborahllk	https://www.wish.com/merchant/5e8593ca691d1b2c0bd6821a
106.	heronz	https://www.wish.com/merchant/58296c54a6170f1b820897e9
107.	kubi1993	https://www.wish.com/merchant/5aeec7c11c25001326fbec64
108.	Lovely TianTian	https://www.wish.com/merchant/5b51b24b6f892b484fa7cb87
109.	lusonghong1740	https://www.wish.com/merchant/6111f524e2a3d0121e044b37
110.	MMKemisidiPuppyPet	https://www.wish.com/merchant/5df7372af5a34b037e8d5afa
111.	Mozzarella	https://www.wish.com/merchant/6184151308832f4adaa79f48
112.	nbmxtudtr	https://www.wish.com/merchant/5fc2261710cec62bb26734ab
113.	Prague jewelry shop	https://www.wish.com/merchant/57eb88acb55b6022dff3627d
114.	taotaoshouji	https://www.wish.com/merchant/58a7be02370a2b505888c29b
115.	zaturday	https://www.wish.com/merchant/5f43d01bc8e8b0016377a8a2
116.	ZeLing991	https://www.wish.com/merchant/5b1a2fa2daac452223731b58
117.	ZKchangjiang	https://www.wish.com/merchant/585a0c6658d7975224b53219